COURT NO.2

IN THE HIGH COURT OF UTTARANCHAL AT NAINITAL

Income Tax Appeal No.566 of 2001

1. The Commissioner of Income Tax, Dehradun
2. Assistant Commissioner of Income Tax, Special Circle, Dehradun

... Appellants

Versus

M/s Hughes Services (FE) Pvt. Ltd.
as agent of Mr. Ogg R.G.
C/o G.C. Nagalia (Advocate)
20-A New Road, Dehradun

... Respondent

Dated: December 13, 2005

Mr. S.K. Posti, Advocate for the appellants.

Coram: Hon. P.C. Verma, J.
Hon. J.C.S. Rawat, J.

This appeal is against the order dated 23.03.2001, passed by the Income Tax Appellate Tribunal, (Delhi Bench 'SMC' Delhi) in ITA No.1704(Del) of 1994. The dispute relates to the Assessment Year 1990-91.

2. The substantial questions of law raised in the appeal are as follows:

> (i) Whether on the facts and in the circumstances of the case, the learned Income Tax Appellate Tribunal was legally correct to hold that the salary paid to the assessee for the off-period outside India was not chargeable to Indian Income Tax Act in terms of Section 9(1)(ii) of the I.T. Act, 1961, whereas the ld. ITAT has itself held vide order dated 25.03.1992 in ITA

No.5649/D/92, dated 28.07.1999 in ITA No. 1079/D/91, dated 24.01.2000 in ITA No.411/D/93 and dated 15.05.2000 in ITA No.1648/D/94, that off period salary is taxable in India and vide order dated 18.11.1996 in RA No.433 to 511/D/96 has referred question of law on this issue for esteemed opinion of this Court?"

(ii) Whether on the facts and in the circumstances of the case, the learned Income Tax Appellate Tribunal was legally correct in holding that substance allowance comprising free boarding facility provided by the employer on board the rig in high seas cannot be construed to be perquisite?"

(iii) Whether on the facts and circumstances of the case, the learned Income Tax Appellate Tribunal was legally justified in directing the AO to charge interest under Section 234-B of the I.T. Act on the tax on total income declared in the return whereas this interest is chargeable on assessed tax as defined by Explanation 1 below Section 234-B which also stands amended by the Finance Act 2001 with retrospective effect from 01.04.1989?"

3. The first question has been decided by the Hon'ble Apex Court in Civil Appeal Nos.351-355 of 2005 "***Sedco Forex International Drill Inc. and Others Vs. Commissioner of Income Tax, Dehradun and Another, JT 2005(9) SC 639***". In view of the aforesaid decision of the Hon'ble Apex Court, this question is answered in favour of the assessee.

4. So far as the question Nos.2 and 3 are concerned, a Division Bench of this Court in the case of *Commissioner of Income Tax and another Vs. Sedco Forex International Drilling Co. Ltd. and connected cases reported in (2003) 264 ITR 320,* has held that the free boarding facility provided by the employer on the rig was not a perquisite under Section 17 (2)(iii) and that its value cannot be added to the income of the assessee. It has also been held that the imposition of interest under Section 234-B was not justified without hearing and without reasons.

5. In view of the above, we dismiss the appeal. All the questions in this appeal are answered against the appellants and in favour of the assessee.

(J.C.S. Rawat, J.) **(P.C. Verma, J.)**

Rajeev Dang